

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO.: 04CV10632 MEL

MARY B. SMITH,)
Plaintiff,)
V.)
DAVID C. NICHOLSON, Trustee of the)
D.J.J. Realty Trust,)
DOMINIC M. SAWICKI, Trustee of the)
Dominic M. Sawicki Nominee Trust and)
CAROL ANN WHITNEY and)
GLENN WHITNEY,)
Defendant(s))

**MOTION TO STRIKE ANSWER OF DEFENDANTS CAROL ANN WHITNEY AND
GLENN WHITNEY AND SUBSTITUE AMENDED ANSWER TO THE PLAINTIFF'S
COMPLAINT (ASSENTED TO)**

NOW come the defendants Carol Ann Whitney and Glenn Whitney, by their attorney and respectfully request this court to strike the Answer to the Complaint previously filed by the defendants before they were represented by counsel and to substitute in its place the attached Amended Answer to Plaintiff's Complaint.

As grounds therefore, the defendants state that the answer previously filed was prepared by the defendants without the assistance of counsel, before they were aware that their homeowner's liability insurance carrier would provide them with counsel who would prepare an appropriate answer to the plaintiff's complaint. The attached Amended Answer to the Plaintiff's Complaint sets forth affirmative defenses which are plead in good faith, and these would be waived if this motion is denied, thereby prejudicing the defendants, Carol Ann Whitney and Glenn Whitney.

The plaintiff filed her complaint on March 31, 2004 and the defendants were served with process on April 5, 2004. No meaningful discovery has taken place, no delay will result from the allowance of this motion, and no party will be prejudiced by the allowance of this motion.

WHEREFORE, the defendants, Carol Ann Whitney and Glenn Whitney, respectfully request that this court allow this Motion to Strike Answer of Defendants Carol Ann Whitney and Glenn Whitney and Substitute Amended Answer to the Plaintiff's

Complaint. The proposed Amended Answer to Plaintiff's Complaint is attached hereto as Exhibit "A".

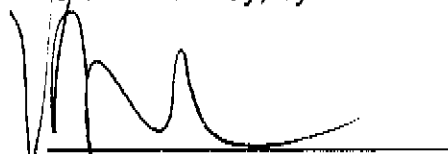
Date: 5/3/04

The Plaintiff,
By her attorney,



Alfred J. Smith, Esquire
BBO#: 467700
706 Bedford Street
Stamford, CT 06901
Telephone: (203) 359-3200

The defendants Carol Ann Whitney and
Glenn Whitney, by their attorney,



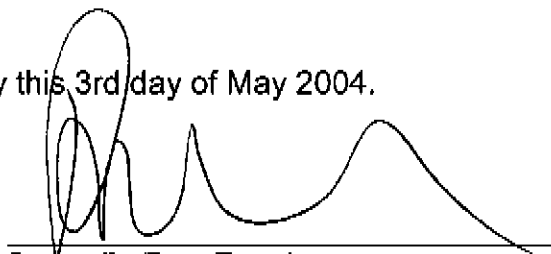
Bruce R. Fox, Esquire
BBO#: 176320
LAW OFFICE OF BRUCE R. FOX
27B Midstate Office Park
Auburn, MA 01501
Telephone: (866) 290-7435

CERTIFICATE OF SERVICE

I, Bruce R. Fox, attorney for the above named defendants, do hereby certify that I caused a copy of the within MOTION TO AMEND ANSWER (ASSENTED TO), AMENDED ANSWER AND JURY DEMAND OF DEFENDANT(s) CAROL ANN WHITNEY AND GLENN WHITNEY, to be served upon each named party by mailing a copy of same, postage prepaid, to each party's counsel of record, namely:

Alfred J. Smith, Esquire
706 Bedford Street
Stamford, CT 06901

Signed under the pains and penalties of perjury this 3rd day of May 2004.



Bruce R. Fox, Esquire